

### **REMARKS**

In the subject Office action dated January 24, 2007, claims 1-5, 8-12, and 33 were examined. In response thereto, claims 1, 8, 9, and 33 are amended, claim 2 is canceled, and claims 1, 3-5, 8-12 and 33 remain under active prosecution. Applicant asserts that the claims are supported by the Specification as originally filed and do not introduce new subject matter.

#### ***Response to Arguments***

Claims 1, 8, 9 and 33 have been amended as indicated above. The amendments are intended to better focus the applicant's claims towards the unique aspects of an anastomosis device for forming an anastomosis between two gastrointestinal tissue lumens and the passage of gastrointestinal contents therethrough. The amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

Applicant appreciates the courtesies extended during the telephonic interview on March 22, 2006 (hereinafter "Interview"). While no agreement was reached during the interview, the Examiner did express appreciation for the addition of a generally unobstructed passageway to the luminal anastomosis device. The Applicant would like the Examiner to carefully consider the above amended claims presented in light of our discussions.

#### ***Claim Rejections - 35 USC § 103***

The Final Office Action mailed on January 24, 2007 (hereinafter "Final Office Action") rejected under 35 U.S.C. 103(a) the following claims: claims 1-3, 9-11 and 33 as being unpatentable over Huebsch in view of Solymar, claim 8 is rejected under 35 U.S.C. 103(a) as obvious over Huebsch, claim 5 is rejected as being unpatentable over the combination of Huebsch and Solymar in view of Berg, and claim 4 is rejected over the combination of Huebsch and Solymar in view of Corcoran.

Applicant believes the interview discussion and the above amended claim 1 provide better clarity and moves independent claim 1 and dependent claims 2-3, 9-11 and 33 away from the 35 U.S.C. 103(a) rejection citing the septal defect plugging art of Huebsch and Solymar.

Under MPEP 2143.03, in order to establish a *prima facie* case of obviousness, the prior art reference or combination of references must teach or suggest all of the limitations of a claim.

Applicant submits that the art of record fails to teach or suggest all of the limitations recited in amended independent claim 1 in accordance with MPEP 2143.03. For instance, Applicant notes that independent claim 1 recites “and when the anastomosis device is in either the unactuated and the actuated position, a substantially unobstructed passageway is provided through the anastomosis device, the passageway extending from a proximal end of the proximal ring to a distal end of the distal ring and wherein when the passageway passes through a ring, the passageway has substantially the same diameter as the ring for maximizing the passage of gastrointestinal contents therethrough”. These limitations, among others recited in claim 1, are neither taught nor suggested by the combined art of record. Applicant therefore submits that the combined art of record fails to teach or suggest all of the limitations of claim 1 in accordance with MPEP 2143.03. Accordingly, Applicant respectfully submits that the combined art of record fails to render present claim 1 obvious in accordance with MPEP 2143, and respectfully requests that the rejection for amended claim 1 and all claims depending therefrom be withdrawn.

With respect to the Examiner’s rejection of dependent claim 8 as being obvious over Huebsch under 35 U.S.C. 103(a), the Applicant submits that the previously described amendment of claim 1 moves claim 8 away from the obviousness rejection of Solymar. Accordingly, Applicant respectfully submits that the combined art of record fails to render present claim 5 obvious in accordance with MPEP 2143, and respectfully requests that the rejection be withdrawn. Applicant has also amended claim 8 to move the anastomosis device away from the “product by process” by including the deformable properties inherent in the permanently formable sheet material into the anastomosis device and believes amended claim 8 is now in condition for allowance.

With respect to the Examiner’s rejection of claim 5 as being unpatentable under the combination of Huebsch and Solymar in view of Berg, Applicant submits that, once again, the previously described amended claim 1 moves claim 5 away from the art of Huebsch and

Solymar. Accordingly, Applicant respectfully submits that the combined art of record fails to render present claim 5 obvious in accordance with MPEP 2143, and respectfully requests that the rejection be withdrawn.

The Examiner has also rejected claim 12 under 35 U.S.C. 103(a) as being unpatentable over the combination of Huebsch and Solymar in view of Barra et al. Under MPEP 2143.03, in order to establish a *prima facie* case of obviousness, the prior art reference or combination of references must teach or suggest all of the limitations of a claim. Applicant respectfully submits that the limitations of the “passageway” found in the previous description of amended claim 1 is not taught or suggested in the art of record, and Applicant respectfully requests that the rejection of claim 12 be withdrawn.

Claim 4 was rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Huebsch and Solymar in view of Corcoran (US 6379368). Applicant submits that the combined art of record must teach or suggest all of the limitations of a claim. For reasons described above, Applicant submits that the art of record does not teach each and every element of the combination of amended claim 1 and claim 4 depending therefrom and requests that the rejection of claim 4 be withdrawn.

**CONCLUSION**

In light of the amendments and remarks made herein, it is respectfully submitted that the claims currently pending in the present application are now in form for allowance. Accordingly, reconsideration of those claims, as amended herein, is earnestly solicited. Applicant encourages the Examiner to contact their representative David Franklin at 513-651-6856 to answer any questions or concerns.

Since after amendment the claims total 10 with 1 independent claim, no fees are due. However, the Commissioner for Patents is hereby authorized to charge any deficiency or credit any overpayment of fees to Frost Brown Todd LLC Account No. 06-2226.

Respectfully submitted,

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**CERTIFICATE OF MAILING**

I hereby certify that a copy of this correspondence is being deposited with the US Patent Office by electronic transmission addressed to MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 this 22<sup>nd</sup> day of March, 2007.



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